

under the terms of the trust instrument on the exercise of such discretion;

(2) The donee, upon reaching age 21, has the right to extend the term of the trust; or

(3) The governing instrument contains a disposition of the property or income not expended during the donee's minority to persons other than the donee's estate in the event of the default of appointment by the donee.

(c) A gift to a minor which does not satisfy the requirements of section 2503(c) may be either a present or a future interest under the general rules of § 25.2503-3. Thus, for example, a transfer of property in trust with income required to be paid annually to a minor beneficiary and corpus to be distributed to him upon his attaining the age of 25 is a gift of a present interest with respect to the right to income but is a gift of a future interest with respect to the right to corpus.

§ 25.2503-6 Exclusion for certain qualified transfer for tuition or medical expenses.

(a) *In general.* Section 2503(e) provides that any qualified transfer after December 31, 1981, shall not be treated as a transfer of property by gift for purposes of Chapter 12 of Subtitle B of the Code. Thus, a qualified transfer on behalf of any individual is excluded in determining the total amount of gifts in calendar year 1982 and subsequent years. This exclusion is available in addition to the \$10,000 annual gift tax exclusion. Furthermore, an exclusion for a qualified transfer is permitted without regard to the relationship between the donor and the donee.

(b) *Qualified transfers*—(1) *Definition.* For purposes of this paragraph, the term “qualified transfer” means any amount paid on behalf of an individual—

(i) As tuition to a qualifying educational organization for the education or training of that individual, or

(ii) To any person who provides medical care with respect to that individual as payment for the qualifying medical expenses arising from such medical care.

(2) *Tuition expenses.* For purposes of paragraph (b)(1)(i) of this section, a

qualifying educational organization is one which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder. The unlimited exclusion is permitted for tuition expenses of full-time or part-time students paid directly to the qualifying educational organization providing the education. No unlimited exclusion is permitted for amounts paid for books, supplies, dormitory fees, board, or other similar expenses which do not constitute direct tuition costs.

(3) *Medical expenses.* For purposes of paragraph (b)(1)(ii) of this section, qualifying medical expenses are limited to those expenses defined in section 213(d) (section 213(e) prior to January 1, 1984) and include expenses incurred for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body or for transportation primarily for and essential to medical care. In addition, the unlimited exclusion from the gift tax includes amounts paid for medical insurance on behalf of any individual. The unlimited exclusion from the gift tax does not apply to amounts paid for medical care that are reimbursed by the donee's insurance. Thus, if payment for a medical expense is reimbursed by the donee's insurance company, the donor's payment for that expense, to the extent of the reimbursed amount, is not eligible for the unlimited exclusion from the gift tax and the gift is treated as having been made on the date the reimbursement is received by the donee.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples.

Example (1). In 1982, A made a tuition payment directly to a foreign university on behalf of B. A had no legal obligation to make this payment. The foreign university is described in section 170(b)(1)(A)(ii) of the Code. A's tuition payment is exempt from the gift tax under section 2503(e) of the Code.

Example (2). A transfers \$100,000 to a trust the provisions of which state that the funds are to be used for tuition expenses incurred by A's grandchildren. A's transfer to the

trust is a completed gift for Federal gift tax purposes and is not a direct transfer to an educational organization as provided in paragraph (b)(2) of this section and does not qualify for the unlimited exclusion from gift tax under section 2503(e).

Example (3). C was seriously injured in an automobile accident in 1982. D, who is unrelated to C, paid C's various medical expenses by checks made payable to the physician. D also paid the hospital for C's hospital bills. These medical and hospital expenses were types described in section 213 of the Code and were not reimbursed by insurance or otherwise. Because the medical and hospital bills paid in 1982 for C were medical expenses within the meaning of section 213 of the Code, and since they were paid directly by D to the person rendering the medical care, they are not treated as transfers subject to the gift tax.

Example (4). Assume the same facts as in example (2) except that instead of making the payments directly to the medical service provider, D reimbursed C for the medical expenses which C had previously paid. The payments made by D to C do not qualify for the exclusion under section 2503(e) of the Code and are subject to the gift tax on the date the reimbursement is received by C to the extent the reimbursement and all other gifts from D to C during the year of the reimbursement exceed the \$10,000 annual exclusion provided in section 2503(b).

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§ 25.2504-1 Taxable gifts for preceding calendar periods.

(a) In order to determine the correct gift tax liability for any calendar period it is necessary to ascertain the correct amount, if any, of the aggregate sum of the taxable gifts for each of the "preceding calendar periods" (as defined in § 25.2502-1(c)(2)). See paragraph (a) of § 25.2502-1. The term "aggregate sum of the taxable gifts for each of the preceding calendar periods" means the correct aggregate of such gifts, not necessarily that returned for those calendar periods and in respect of which tax was paid. All transfers that constituted gifts in prior calendar periods under the laws, including the provisions of law relating to exclusions from gifts, in effect at the time the transfers were made are included in determining the amount of taxable gifts for preceding calendar periods. The deductions other than for the specific exemption (see paragraph (b) of this section) allowed by the laws in effect at the

time the transfers were made also are taken into account in determining the aggregate sum of the taxable gifts for preceding calendar periods. (The allowable exclusion from a gift is \$5,000 for years before 1939, \$4,000 for the calendar years 1939 through 1942, \$3,000 for the calendar years 1943 through 1981, and \$10,000 thereafter.)

(b) In determining the aggregate sum of the taxable gifts for the "preceding calendar periods" (as defined in § 25.2502-1(c)(2)), the total of the amounts allowed as deductions for the specific exemption, under section 2521 (as in effect prior to its repeal by the Tax Reform Act of 1976) and the corresponding provisions of prior laws, shall not exceed \$30,000. Thus, if the only prior gifts by a donor were made in 1940 and 1941 (at which time the specific exemption allowable was \$40,000), and if in the donor's returns for those years the donor claimed deductions totaling \$40,000 for the specific exemption and reported taxable gifts totaling \$110,000, then in determining the aggregate sum of the taxable gifts for the preceding calendar periods, the deductions for the specific exemption cannot exceed \$30,000, and the donor's taxable gifts for such periods will be \$120,000 (instead of the \$110,000 reported on the donor's returns). (The allowable deduction for the specific exemption was \$50,000 for calendar years before 1936, \$40,000 for calendar years 1936 through 1942, and \$30,000 for 1943 through 1976.)

(c) If the donor and the donor's spouse consented to have gifts made to third parties considered as made one-half by each spouse, pursuant to the provisions of section 2513 or section 1000(f) of the Internal Revenue Code of 1939 (which corresponds to section 2513), these provisions shall be taken into account in determining the aggregate sum of the taxable gifts for the preceding calendar periods (under paragraph (a) of this section).

(d) If interpretations of the gift tax law in preceding calendar periods resulted in the erroneous inclusion of property for gift tax purposes that should have been excluded, or the erroneous exclusion of property that should have been included, adjustments must be made in order to arrive at the correct aggregate of taxable gifts for the